

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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Craig Chestnut, #333070

2012 FEB -3 P 2:19

Plaintiff,

C/A No.: 3:11-3189-RMG

v.

ORDER

Charles Brown, Ofc, individually and in his official
capacities,

Defendant.

Plaintiff brought this *pro se* action pursuant to 42 U.S.C. § 1983. Pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2), DSC, the case was automatically referred to the United States Magistrate Judge for all pretrial proceedings. On January 9, 2012, the Magistrate issued a Report and Recommendation recommending that this Court dismiss Plaintiff's Complaint without prejudice and without issuance and service of process. (Dkt. No. 8). The Magistrate Judge instructed Plaintiff of the deadline for filing objections to the Report and Recommendation and the serious consequences for failing to do so. (*Id.* at 5). Nevertheless, Plaintiff did not file any objections to the Report and Recommendation. As explained herein, the Court adopts the Magistrate's Report and Recommendation and dismisses Plaintiff's complaint without prejudice and without issuance and service of process.

Law/Analysis

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific

objection is made, and this Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate with instructions.” *Id.* Where, as here, the plaintiff fails to make specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th Cir.1983).

After reviewing the record of this matter, the applicable law, and the Report and Recommendation of the Magistrate Judge, the Court agrees with and adopts the Report and Recommendation in its entirety. As explained in the Report and Recommendation, Plaintiff previously brought a nearly identical claim against the same Defendant based on the same incident in which Plaintiff was allegedly hit in the face with a “squeegee” by another inmate. In a previous suit, which was filed on August 6, 2010, Plaintiff alleged, as he does in the case *sub judice*, that Defendant failed to protect him from the inmate who allegedly hit Plaintiff in the face with a squeegee. *See Chestnut v. S. C. Dep’t of Corrs.*, No. 3:10-cv-02050-RMG (D.S.C. Oct. 26, 2010). On October 26, 2010, this Court issued an Order finding that Plaintiff failed to state a claim upon which relief could be granted and dismissing Plaintiff’s Complaint. (*Id.* at Dkt. No. 13). The Court’s Order was affirmed on appeal. *See Chestnut v. S.C. Dep’t of Corrs.*, No. 10-7748, 2011 WL 1296531 (4th Cir. April 6, 2011). As explained in the Court’s Order dismissing Plaintiff’s previous suit, Plaintiff’s allegations about the incident in which Plaintiff was hit with a squeegee do not constitute a constitutional violation. Plaintiff’s Complaint in this case should be dismissed for the same reasons that his previous Complaint was dismissed. As explained by the Fifth Circuit, a district court “clearly [has] the right to take notice of its own files and records and it [has] no duty to grind the same corn a second time.” *Aloe Crème Labs.*,

Inc. v. Francine Co., 425 F.2d 1295, 1296 (5th Cir. 1970); *see also United States v. Parker*, 956 F.2d 169, 171 (8th Cir. 1992).

Conclusion

Accordingly, this Court adopts the Magistrate's Report and Recommendation and dismisses Plaintiff's Complaint without prejudice and without issuance and service of process.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. M. Gergel', is written over a horizontal line.

Richard Mark Gergel

United States District Court Judge

February 3, 2012

Charleston, South Carolina